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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
EATON HARRY MAGOON, JR.,
Debtor(s).

No. 99-11196

Memorandum on Motion to Convert

In August, 2000, the court confirmed the Chapter 11 plan of debtor Eaton Harry Magoon, Jr. The order confirming the plan contained a provision, negotiated by the parties, that certain shares of stock would not be sold except for a price necessary to pay certain creditors in full. The case was thereafter closed, but re-opened in April of 2004 upon the motion of a creditor, First Hawaiian Bank, arguing that the debtor was in default under the plan. About a month after the case was re-opened another creditor, Koala Investors, LLC, filed a motion to convert the case to Chapter 7. That motion is now before the court.

The debtor admits that the stock was sold in violation of the plan. It appears that in October, 2003, Magoon transferred the stock to another entity, Magoon Acquisition and Development, LLC, (“MAD”) of which Magoon is a 50% owner, and did not pay the creditors as required by the plan. Thus, when the motion was made it was entirely meritorious and, but for a flurry of activity by MAD, would probably have been granted. Seeing that its acquisition was about to be upset, MAD set about paying, acquiring, or otherwise satisfying all claims in the case. It now appears that all claims, including those

1 of First Hawaiian Bank and Koala, have been fully satisfied and there are no outstanding claims or
2 creditors. For reasons not entirely clear to the court, Koala still presses its motion and seeks conversion
3 of the case to Chapter 7.¹

4 The crux of Koala's position is that the "direct violation of the Order of this Court [i.e., the
5 confirmation order] by the debtor mandates that the case be converted to a case under Chapter 7"
6 The court finds this argument flawed.

7 The court first notes that § 1112(b) of the Bankruptcy Code, governing involuntary conversion, is
8 discretionary, not mandatory. Under § 1112(b)(8), the court *may* convert a case for material default
9 with respect to a confirmed plan. Because the effect of the default has been cured by satisfaction of all
10 claims, the court finds no cause for conversion.

11 Contrary to Koala's argument, a confirmed Chapter 11 plan is not a mandate from the court
12 carved in stone. A Chapter 11 bankruptcy plan is essentially a contract between the debtor and his
13 creditors, and must be interpreted according to the rules governing the interpretation of contracts. *Miller*
14 *v. U.S.*, 363 F.3d 999, 1004 (9th Cir. 2004); *Hillis Motors, Inc. v. Haw. Auto. Dealers Ass'n*, 997 F.2d
15 581, 588 (9th Cir.1993). There are therefore major and minor breaches, and every breach, especially
16 one which is cured, is not grounds for abrogation.

17 Koala would have an argument if the plan forbade transfer of the stock under all circumstances.
18 However, the stock could be sold at any time under the plan so long as creditors were paid. Therefore,
19 under the terms of the plan as the court interprets it, the purpose of the stock was a source of repayment
20 to creditors. Although the stock was at first transferred without such payment, the creditors have now
21 been paid. While the exact mechanism of payment was not what the plan contemplated, the end result is
22 entirely consistent with the plan. Accordingly, the court finds no justification for conversion at this time.

23 Koala finds itself in the position of seeing its originally meritorious motion undermined by
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25 ¹Koala is not an original creditor, having purchased its claim. It appears that Koala was and
26 remains primarily interested in acquiring the stock in question.

1 subsequent events. Its last argument (which the court does not fully understand and seems particularly
2 lame) is that the case should be converted because even though Koala and the other creditors have been
3 paid in full somebody some time may want the money back. This unlikely contingency does not justify
4 conversion at this time.

5 For the foregoing reasons Koala's motion will be denied, without prejudice to renewal if anyone
6 demands repayment of the funds tendered to Koala in satisfaction of its claim. Counsel for the debtor
7 shall submit an appropriate form of order.

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9 Dated: July 4, 2004

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12 Alan Jaroslovsky
13 U.S. Bankruptcy Judge
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